

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

El Paso Natural Gas Company

Docket No. RP00-336-021

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued November 13, 2003)

1. On October 20, 2003, El Paso Natural Gas Company (El Paso) and the former Full Requirements Shippers (hereinafter the Section 9 Shippers, as they are referred to in the pro forma tariff sheets implementing the Settlement)¹ submitted a Stipulation and Agreement (Settlement) to establish procedures for use of the reserve capacity pool established by the Commission's July 9, 2003 Order in this proceeding (July 9 Order).² As discussed below, the Commission will approve the uncontested Settlement. This order benefits customers because it permits the shippers that will use the capacity pool and El Paso to establish mutually satisfactory procedures for the use of the pool.

Background

2. On May 31, 2002, the Commission issued an Order on Capacity Allocation and Complaints (May 31 Order).³ That order established a framework for resolving the capacity allocation problems that had rendered firm service on El Paso unreliable in recent years. In order to restore reliable firm service on El Paso, the May 31 Order, among other things, directed that service under full requirements (FR) contracts be

¹ These shippers are Arizona Electric Power Cooperative; Arizona Public Service Co. and Pinnacle West Energy Corp.; BHP Copper; UNS Gas, Inc.; City of Las Cruces; City of Mesa, Arizona; El Paso Electric Co.; MGI Supply LTD; Navajo Tribal Utility Authority; Phelps Dodge Corp.; PNM Gas Services; Salt River Project Agricultural Improvement and Power District; Southwest Gas Corp.; and Texas Gas Service.

² 104 FERC ¶ 61,045 (2003).

³ 99 FERC ¶ 61,244 (2002).

converted to service under contract demand (CD) contracts.⁴ On September 20, 2002, the Commission issued an order⁵ that clarified certain of the rulings in the May 31 Order and adopted a capacity allocation methodology for El Paso.

3. In the July 9 Order, the Commission addressed requests for rehearing of the May 31 and September 20 Orders. The Commission, among other things, directed El Paso to establish a reserve pool of 110 MMcf/d of capacity for the converting FR shippers to use until El Paso places into service the first two phases of the three phases of its Line 2000 Power-Up Project.⁶

4. On August 1, 2003, El Paso filed tariff sheets to comply with the requirements of the July 9 Order, including the requirement to establish the reserve capacity pool. Several parties filed protests to El Paso's compliance filing, alleging, among other things, that the procedures proposed for use of the capacity pool were unnecessarily complicated. In an order issued August 29, 2003,⁷ the Commission accepted El Paso's tariff sheets to become effective September 1, 2003, subject to the outcome of a technical conference to address the concerns raised in the protests. The technical conference was held on September 24, 2003.

⁴ El Paso had historically served its firm customers under two types of contracts, FR contracts and CD contracts. CD contracts provide specific delivery rights up to specified quantity limitations at delivery points designated in the contracts. FR contracts provided that El Paso must deliver and the customer must take from El Paso, the customer's full gas requirements each day; there was no limit on the amount of gas the FR customers could take other than the capacity of their delivery points.

⁵ 100 FERC ¶ 61,285 (2002).

⁶ 104 FERC ¶ 61,045 at P 153. The Commission issued a certificate to El Paso authorizing the construction of the Power-Up Project to provide an additional 320 MMcf/d of capacity on its Line 2000. El Paso Natural Gas Co., 103 FERC ¶ 61,280 (2002). In the May 31 and the September 20 Orders, the Commission directed El Paso to include this 320 MMcf/d in the capacity to be allocated to the FR Shippers as their initial CD allocations. At the time those orders were issued, it appeared that the capacity from the Project would be in service by May 2003. However, El Paso subsequently informed the Commission that the projected in-service dates of the three phases of the Power-Up are February 2004 (120 MMcf/d), April 2004 (100 MMcf/d), and April 2005 (100 MMcf/d).

⁷ 104 FERC ¶ 61,232 (2003).

5. The conversion of FR service to CD service became effective September 1, 2003. Pursuant to the tariff sheets that went into effect on September 1, 2003, El Paso uses the existing firm contracting features of its capacity release program to award pool capacity.

6. On October 3, 2003, El Paso and the Section 9 Shippers filed this Settlement to resolve all the issues involving access to and administration of the capacity pool. These parties state that as a result of discussions at the technical conference and the subsequent exchange of documents, El Paso and all of the Section 9 Shippers have reached an agreement as to how the capacity pool should be administered.

The Settlement

7. The Settlement provides that effective December 1, 2003, each Section 9 Shipper will have a minimum reserve capacity pool quantity equal to its monthly pro rata share of the reserve pool. Each shipper's pro rata share of the pool will be proportionate to its monthly allocated share of the Power-Up Project capacity. The Section 9 Shippers must nominate all of their firm entitlements under their other firm transportation service agreements (except for their entitlements allocated to Block II capacity) before requesting capacity from the reserve pool. Further, these shippers may not release capacity (except for Block II capacity) during times when they are nominating capacity from the reserve pool.

8. The Settlement provides that a Section 9 Shipper may nominate volumes up to the entire capacity in the reserve pool. However, all Section 9 Shippers will be entitled to have their confirmed minimum reserve pool quantities scheduled before any shippers nominating above their minimum quantities are allocated pool capacity.⁸ Article I establishes scheduling procedures for the pool and allocation of pool capacity when nominations exceed the total capacity of the pool.

9. The Settlement provides that each Section 9 Shipper will receive a separate transportation agreement (Pool Contract) under which it will access the capacity in the pool. The exhibits to the Pool Contracts will reflect the shippers' minimum capacity entitlements to the reserve capacity pool on a monthly basis. Appendix A to the Settlement contains a pro forma Pool Contract with exhibits, and the Settlement provides that approval of the Settlement will constitute approval of the pro forma contract as well. Further, the Settlement states that each Section 9 Shipper agrees to enter into a Pool Contract that does not materially deviate from the pro forma Pool

⁸ However, in Cycle 4, minimum capacity pool quantities nominated for the first time will not be allowed to bump previously scheduled above-minimum volumes.

Contract and, accordingly, El Paso shall not be required to file with the Commission any of the individual contracts or exhibits.

10. Article II of the Settlement provides that demand charge credits will be paid by El Paso for amounts equal to or less than a shipper's minimum reserve capacity pool quantity that are properly nominated and confirmed but not scheduled; amounts above the shipper's minimum reserve capacity pool quantity up to the total capacity in the pool that are properly nominated and confirmed but not scheduled will be eligible for credits to the extent that the full capacity in the pool cannot be scheduled by El Paso. Article III of the Settlement describes other changes in the capacity pool procedures, including the clarification that Section 9 Shippers are permitted to nominate reserve pool capacity to primary and alternate points in their historic market areas.

Discussion

11. The Commission required El Paso to establish the capacity pool to ensure that the firm service that the converting FR shippers receive under their new CDs will be reliable firm service and to ensure that El Paso can meet these shippers' new CDs pending completion of the Power-Up Project. The Settlement is consistent with that purpose and with the Commission's direction concerning the amount of capacity to be contained in the pool. The Commission has throughout this proceeding encouraged the parties to agree to solutions to the capacity problems on El Paso. It is appropriate that the shippers that will use the pool and El Paso establish mutually satisfactory procedures for access to and administration of the pool.

12. Therefore, the Commission finds, pursuant to Section 602(g) of the Rules of Practice⁹ that the uncontested settlement is fair and reasonable and in the public interest. The Commission will approve the Settlement to become effective December 1, 2003 as proposed.

The Commission orders:

(A) The uncontested settlement is approved, effective December 1, 2003.

⁹ 18 C.F.R. § 385.602(g)(2003).

(B) El Paso is directed to file, within 10 days of the issuance of this order, tariff sheets consistent with the Pro Forma Tariff Sheets included in the Settlement and the Settlement, to be effective December 1, 2003.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.